IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 594 OF 2004
IN
SUIT NO. 2439 OF 1990

Vinod Tikamdas Bajaj ... Plaintiff

v/s

Ramesh Tikamdas Bajaj & ors. ... Defendants

Ms. R.C. Nichani for the plaintiff.

Mr. Rafiq Mohiudin with Ms. N. Bhatia i/by Prem S. Gidwani for the defendant No.1/applicant.

Mr. U.P. Bobde for defendant Nos. 2 and 3.

CORAM: P.V. KAKADE, J.

DATED: 14TH DEC., 2005

P.C.:

1. This chamber summons is taken out by the original defendant No.1 seeking permission to file separate written statement in a partition suit which is ripe for hearing.

2. I have heard the learned counsel for the applicant as well as respondents. Perused the record.

According to the applicant/defendant No.1, when the

common written statement by all the three defendant brothers was filed, defendant No.2 was handling the case being a elder brother and had full trust in him and therefore signed the written statement without going into the details, which came to be filed on 11.10.1995. Thereafter, in the year 2005 he has realized that his brothers defendant Nos. 2 and 3, with malafide intention and with ill reasons, have started depriving him with share in the joint Undivided Hindu Family property including residential flat at Sindhu Building, Marine Drive and so also the office premises at 8, Himalaya House, 79, Palton Road, Mumbai - 400 001 and have been assaulting him and his family members and, therefore, on the basis of their conduct and assault he was also compelled to file police complaints. Therefore, it is the case of the applicant that he should be allowed to file his written statement separately inspite of the fact that common written statement was filed about 10 years ago, prior to the chamber summons which was signed by him when he was 48 years' old.

3. The learned counsel for the respondents made strong exception to the plea on various grounds including that certain admissions were given by the parties in the

written statement and, therefore, written statement cannot be allowed to be amended contrary to the contents of the written statement filed earlier in the year 1995.

4. In this regard, the learned counsel for the applicant sought to put reliance on the ruling of this Court in the case of **Chintaman Balkrishna Godbole v/s. Damodar Hari Dixit & ors., reported in 1986 (1) Bom.C.R. 364,** wherein the learned Single Judge has observed that there is nothing in Order VIII Rule 9 of the Code of Civil Procedure to prohibit the defendants from taking a particular plea while permitting him to file supplementary written statement. The terms which a Court could impose under Order VIII Rule 9 relate to the time within which it should be filed and the costs, if any, the Court may deem fit to award as a condition for filing written statement. No term prohibiting the defendants from taking such pleas as are available to him under the law, can be imposed under the said provision. Further, the Court having permitted the additional written statement to be filed, cannot foreclose the defences open to a party. Therefore, on the basis of these observations, it was submitted that the defendant No.1 is entitled to file his written statement especially in the present scenerio existing in

the suit where he has realized that other brothers i.e. defendants 2 and 3 are acting contrary to the interest of himself i.e. defendant No.1 with regard to the property in question.

5. In this regard, perusal of the written statement shows that, in para 2 it was categorically submitted that, one of the property i.e. suit flat was contended to be exclusively owned by defendant No.2. Relying on this observation, the learned counsel for the applicant - defendant No.1 submitted that this was against his own interest and, therefore, he should be allowed to file his own written statement contrary to the stand taken earlier by common written statement filed by them. In this regard, the learned counsel for the respondents put reliance on two Supreme Court rulings, in the case of **M/s. Modi Spinning & Weaving Mills Co. Ltd. & anr. v/s. M/s. Ladha Ram & Co., reported in A.I.R. 1977 SC 680,** the Apex Court endorsed to the view taken by the Trial Court holding that when defendants wanted to resile from admissions made in the written statement. The repudiation of the clear admission is motivated to deprive the plaintiff of the valuable right accrued to him and it is against law. Similarly, in the case of **Heeralal v/s Kalyan Mal & ors., reported in A.I.R. 1998**

SC 618, the Apex Court has endorsed the view in the case of M/s. Modi Spinning & Weaving Mills Co. Ltd. (Supra) and has observed that, once the written statement contains an admission in favour of the plaintiff by amendment, such admission of the defendant cannot be allowed to be withdrawn if such withdrawal would amount to totally displacing the case of the plaintiff and which would cause him irrtrievable prejudice. It was further observed that inconsistent plea which would displace the plaintiff completely from the submissions made by the defendant in the written statement cannot be allowed. Further it was concluded that the amendment of the written statement attempting to go behind the admission cannot be allowed in law.

In view of these aspects, it was submitted on behalf of the respondents that though the provision of Order VIII Rule 9 of the C.P.C. may allow to file supplementary written statement, the additional written statement resiling the earlier stand and taking contrary stance cannot be allowed in law and, therefore, chamber summons deserves to be dismissed.

On the other hand, it was submitted on behalf of the applicant that the Supreme Court rulings cited by the

respondents would not be applicable to the present case on the ground that in both cases the effect show that such written statement taking contrary stand could not be aloowed if those are prejudicial to the cause of the plaintiff and, therefore, it was further submitted that, in fact, it so happens that stand which is said to be taken by defendant No.1 would be in support of the plaintiff and, therefore, the ratio laid down by the Supreme Court in the said case would not be applicable.

6. Taking into account all these aspects and facts involved, it is obvious that the suit is for partition of Undivided Hindu Joint family property and plaintiffs and defendants are brothers of each other and, therefore, it is needless to say that if the plaintiff proves his case to the effect that the property is joint family property, then defendant No.1 alongwith other defendants would be entitled to the respective shares in the suit property and, therefore, he would have no grievance in that regard. On the other hand, if he is allowed to file written statement, at this stage contrary to his own written statement making certain admissions, then it would be contrary to the provisions of law and dicta laid down by the Supreme Court for obvious reasons.

The matter can be looked into from altogether different angle. Admittedly, applicant defendant No.1 is a 48 years' old person when he signed the written statement in the year 1995 and by his new stand, consequent upon signing the written statement which exists as on today, now it is argued on his behalf that he realised that his interest is not guarded by defendant Nos. 2 and 3 and his signatures were obtained malafide and there is absolutely no material on record to show that defendants 2 and 3 have acted malafide with him to deprive the defendant No.1 of his livelihood rights when the written statement was signed by all the defendants in the year 1995 and, therefore, this plea taken on behalf of the applicant defendant No.1 is devoid of any merits and, therefore, cannot be taken into account.

7. In this regard it would also be noted that in the present case, advocate for the plaintiffs did not challenge the chamber summons at all. It was urged on behalf of the respondents that defendant No.1 has joined hands with the plaintiffs as a result of which the present chamber summons is filed to seek amendment. Be that as it may, the fact remains that the chamber summons deserves to be dismissed on merits.

8. In view of this position, the chamber summons is devoid of any merits and stands dismissed with no order as to costs.

.....